

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4355 OF 2005.

M/s.Mack Enterprises,)
Through Proprietor,)
Shri.Arvind Vinayak Kelkar,)
Age: 42 years, Occ:Business,)
R/at.Harbhat Road, Sangli.) ...Applicant

Versus.

1. Shri Vijay Vishnu Bhide,)
Age: 35 years, Occ:Business,)
R/at.Near Ganpati Zilla Gas)
Godown, 111 North Shivaji-)
Nagar, Sangli.)
2. The State of Maharashtra) ... Respondents

Shri Rajesh Bobde holding for Shri Umesh Mankapure for
the Applicant.
Shri Sangam Sahashtabudhhe for the Respondent No.1.
Shri S.R.Shinde, A.P.P for the State.

CORAM : ABHAY S.OKA, J.

DATED : DECEMBER 14, 2006.

ORAL JUDGMENT:

1. The learned Advocates appearing for the parties
stated that the settlement is not possible. By order
dated 23rd November, 2006 the Advocates were put to
notice that in case the settlement does not materialise,
the Application/Appeal will be decided finally at
admission stage.

2. The Applicant is the complainant in the
complaint under section 138 of the Negotiable

Instruments Act, 1881. By order dated 11th April, 2005 the learned Chief Judicial Magistrate, Sangli dismissed the complaint for default as the Applicant was absent. The said order has been made under section 256 of the Code of Criminal Procedure, 1973.

3. The learned Advocate for the Applicant submitted that there is no default on the part of the Applicant. The Applicant was diligently prosecuting the complaint and therefore, when the Applicant was not present only on one particular date, the court should not have dismissed the complaint.

4. The learned Advocate for the first Respondent opposed the submissions by pointing out the entries in the roznama. He submitted that the complainant repeatedly remained absent and that is the reason why the court was compelled to dismiss the complaint for default. He, therefore, submitted that no interference is called for.

5. I have considered the submissions. I have perused the true copy of roznama annexed to the Application. On 07th May, 2003, verification of the Applicant was recorded and process was issued. On 19th June, 2003, the Applicant was absent. However, on 03rd September, 2003 the Applicant was present but the first

Respondent was absent and therefore, non-bailable warrant was ordered to be issued. On 01st October, 2003 the Applicant was present. However, the case was adjourned for receiving report as regards service of non-bailable warrant. On the next date i.e. on 31st October, 2003 the complainant was absent. Thereafter on 01st December, 2003 the complainant was present and the first Respondent applied for cancellation of non-bailable warrant and for bail. On the next date i.e. 23rd December, 2003 the Applicant and the first Respondent were present and the case was adjourned for recording the plea. Thereafter the case was fixed on 26th February, 2004, 15th May, 2004, 26th July, 2004, 24th September, 2004, 22nd November, 2004, 07th February, 2005, 19th March, 2005 and 11th April, 2005. The roznama shows that on 26th February, 2004, 26th July, 2004, 22nd November, 2004 and on the date of passing the impugned order i.e. 11th April, 2005 the Applicant was absent. The roznama does not indicate that because of the absence of the Applicant the case was required to be adjourned. Infact, on 19th March, 2005, the case was adjourned as the learned Judge was not available.

6. In view of what is stated above, in my view, the learned Trial Judge ought to have given one more chance to the complainant to prosecute the complaint especially

when the complainant was diligently prosecuting the complaint.

7. Hence, I pass the following order:

- (i) The order dated 11th April, 2005 passed by the learned Chief Judicial Magistrate, Sangli is quashed and set aside and the complaint bearing Criminal Case No.2108 of 2002 is restored to the file.
- (ii) Parties are directed to appear before the learned Trial Judge on 15th January, 2007 for fixing the schedule of hearing of the case.
- (iii) Application is accordingly disposed of.
- (iv) Writ to be sent immediately.

Judge.